

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APOTEX, INC.,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 2:06-cv-2768
RANBAXY LABORATORIES LIMITED and	:	
RANBAXY PHARMACEUTICALS, INC.,	:	
Defendants.	:	
GIANT EAGLE, INC.,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 2:10-cv-5164
RANBAXY LABORATORIES LIMITED and	:	
RANBAXY PHARMACEUTICALS, INC.,	:	
Defendants.	:	
WALGREEN CO., <u>et al.</u> ,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	No. 2:09-cv-3956
RANBAXY LABORATORIES LIMITED and	:	
RANBAXY PHARMACEUTICALS, INC.,	:	
Defendants.	:	
RITE AID CORPORATION, <u>et al.</u> ,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	No. 2:09-cv-3820
RANBAXY LABORATORIES LIMITED and	:	
RANBAXY PHARMACEUTICALS, INC.,	:	
Defendants.	:	

**Instruction No. 9 – Rule of Reason – Plaintiffs’ Initial Burden –
Whether the Payment was “Large”⁸**

Whether a payment is large depends on the specific facts and circumstances of this case. Generally, a reverse payment is large if it meets two criteria.

First, you must ask whether the payment exceeds the patent holder’s—here, Cephalon’s—anticipated future litigation costs.

Second, you must consider whether the payment was significant enough to induce a generic challenger – here, Ranbaxy – to abandon its patent claim and stay off the market. One factor you may consider in assessing whether the payment was significant enough to induce Ranbaxy to stay off the market, is whether the payment comes close to or exceeds the expected profit to be earned by Ranbaxy if it had prevailed in the patent litigation.

⁸ King Drug Co. of Florence v. Cephalon, Inc., 88 F. Supp. 3d 402, 416-18 (E.D. Pa. 2015).